H.R. 5679, The Foreclosure Prevention and Sound Mortgage Servicing Act of 2008 and the Status of Voluntary Loss Mitigation Efforts Undertaken by Mortgage Servicers

Written Testimony of

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Chairwoman Waters, Ranking Member Capito and Member of the Subcommittee thank you for holding this important hearing today and for inviting the California Reinvestment Coalition ("CRC") to testify. There is no issue more important for California's communities today than foreclosure prevention. The situation is dire and we need some relief.

My name is Kevin Stein. I am the Associate Director of the California Reinvestment Coalition, and the author of CRC's report, "The Growing Chasm Between Words and Deeds: Lenders Still Failing to Live Up To Their Public Commitments to Modify Home Loans and Help Borrowers Avoid Foreclosure." This report was based on a survey of 38 home loan counseling agencies in California and describes their experiences dealing with loan servicers in an effort to keep borrowers in their homes.

There are 3 main points I would like to make to the Subcommittee:

- Loose underwriting and predatory lending have created a growing foreclosure crisis in our communities
- The current framework for loss mitigation, which relies on voluntary efforts by the industry, is not working to stop the wave of foreclosures
- Congress must act to require good faith efforts in loss mitigation, as well as push for broader solutions, such as allowing a federal agency to buy and rework distressed loans

California Reinvestment Coalition

The California Reinvestment Coalition (CRC), based in San Francisco, is a nonprofit membership organization of two hundred fifty (250) nonprofit organizations and public agencies across the state of California. We work with community-based organizations to promote the economic revitalization of California's low-income communities and communities of color. CRC promotes increased access to credit for affordable housing and community economic development, and to financial services for these communities.

CRC and its members have embarked on a campaign to keep borrowers in their homes. The key components of the campaign are 1) supporting and building capacity for home loan counselors who are on the front lines in helping distressed homeowners; 2) promoting the long term loan modifications that borrowers need and deserve from loan servicers; and 3) reforming the mortgage lending process to ensure that the scourge of predatory lending does not recur. We believe that the Foreclosure Prevention and Sound Mortgage Servicing Act can go a long way towards encouraging long term loan modifications that keep borrowers in their homes.

Foreclosure Crisis in California

According to Realtytrac, foreclosure filings were reported on a total of 64,711 California properties in March, the most of any state for the 15th consecutive month, up 21 percent from

February 2008 and up 106 percent from March 2007.[1] Seven of the top ten metro areas in the nation hardest hit by foreclosure are in California. The Stockton, Calif., metro area documented the second highest metro foreclosure rate, with one in every 87 households receiving a foreclosure filing in February. Other California metro areas in the top 10 were Modesto at No. 3, Merced at No. 4, Riverside-San Bernardino at No. 5, Bakersfield at No. 7, Vallejo-Fairfield at No. 8 and Sacramento at No. 9.[2]

The foreclosure crisis is devastating working families who are uprooted from their homes and may face homelessness. But foreclosures also have large impacts on the broader community. Tenants who have been dutifully paying rent are forced to leave investor-owned homes, often illegally, sometimes after their water and utilities have been shut off when the owner or foreclosing bank stops paying the bill. Neighboring families see their property values decline further, making it harder for them to refinance their home loans to avoid foreclosure. Communities suffer from foreclosed homes that sit on the market, leading to neighborhood blight, and possibly inviting unsafe and illegal activity. Local governments are unable to collect property taxes which help fund basic services, and are forced to incur costs to process an increasing number of foreclosures.[3] And the California state economy is facing a large budget deficit, in part, as a result of the foreclosure crisis.

What Happened?

Over the last few years, lenders and brokers aggressively sold loans to borrowers that they could not understand or afford to repay. Even the banking regulators recognized this and have since enacted new guidance on nontraditional and subprime lending to tighten underwriting standards. A current investigation by New York Attorney General Andrew Cuomo reportedly is confirming there was a clear and significant decrease in lending standards over these last few years.[4] Indeed, the loans that banks bought and sold on Wall Street during this time are increasingly going into

[1] RealtyTrac, *Foreclosure Activity Increases 5 Percent in March According to Realtytrac U.S. Foreclosure Market Report*, (April 15, 2008), available at http://www.realtytrac.oom.
[2] RealtyTrac, *Foreclosure Activity Decreases 4% in February* (March 13, 2008), available at http://www.realtytrac.oom.
[3] William C. Apgar and Mark Duda, *Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom*, Homeownership Preservation Foundation, May 2005, http://www.995hope.org/content/pdf/Apgar_Duda_Study_Short_Version.pdf, (accessed February 26, 2008).
[4] Jenny Anderson and Vikas Bajaj, "Firm Gets Immunity for Information on Risky Loans," San Francisco Chronicle, January 17, 2008, from the New York Times. The article reported that a company that analyzes the quality of thousands of home loans agreed to cooperate with an investigation by New York Attorney General Andrew Cuomo into whether information was improperly withheld from investors of mortgage backed securities. The firm, Clayton Holdings, has reportedly told prosecutors that starting in 2005, it saw a significant deterioration of lending standards and a parallel jump in loans that did not meet even lowered lending standards. Clayton was also reportedly directed by Wall Street firms to evaluate half as many loans as it had been, which would make finding problematic loans less likely.

default.[5] As a result, borrowers are stuck with loans that have resetting interest rates that will make the loans impossible to repay.

In March, CRC and national allies released a report highlighting the danger facing neighborhoods as a result of mortgage lending by high-risk lenders. Subprime lenders that have ceased operations in 2007 had saturated minority communities across the country with high risk loans before going under. The report, *Paying More for the American Dream: The Subprime Shakeout and Its Impact on Lower-Income and Minority Communities,* (California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, Ohio Fair Lending Coalition, and Woodstock Institute, March 2008)[6] examined the geographic lending patterns of these defunct subprime lenders in seven metropolitan areas in the United States. These areas include large urban areas - New York City, Los Angeles, Chicago, and Boston, - as well as the smaller urban areas of Cleveland, Charlotte, NC and Rochester, NY.

Most of these lenders had captured large market shares in minority communities and made few, if any, loans elsewhere. In Los Angeles, high-risk lenders' presence was 9.5 times greater in high minority neighborhoods than in white neighborhoods. As these institutions' loans enter into default and foreclosure, minority and lower-income communities will certainly bear the brunt of the negative impacts, such as increased crime and depressed property values.

How bad were these lenders? Two of the largest lenders examined were New Century Mortgage and Fremont Investment & Loan. Before filing for bankruptcy, New Century account agents are alleged to have coached loan brokers on how to draw up fake business cards for borrowers getting stated income loans that are prone to abuse. And a Massachusetts court recently agreed with the state Attorney General that many of Fremont Investment & Loan's loans were "presumptively unfair" and should not be allowed to proceed to foreclosure through the normal court process.[7] Fremont Investment & Loan was previously subject to a rare cease and desist order from the FDIC. These are the kinds of loans that are sitting in California's communities.

CRC Efforts to Respond to the Crisis

For the last several years, CRC has fought against predatory lending practices, negotiating with lenders and urging regulatory reform. Yet the ability of predatory lenders and predatory financiers to outpace legislation and regulation has forced CRC and others to focus resources on

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[5] Jenny Anderson and Vikas Bajaj, "Wary of Risk, Bankers Sold Shaky Debt: SEC Inquiry Focuses on Firms' Holdings," New York Times, December 6, 2007. The article reports that almost a quarter of the subprime loans securitized last year by Deutsche Bank, Barclays, and Morgan Stanley were in default, according to Bloomberg. About a fifth of the loans underwritten by Merrill Lynch were in default.

[6] Available at www.calreinvest.org.

[7] See, Commonwealth of Massachusetts v. Fremont Investment & Loan and Fremont General Corporation, Superior Court Civil Action, No. 07.4373-BLS 1.

preventing foreclosures.

A year ago, CRC called for a 6 month moratorium on foreclosures in our state. In a week's time, one hundred twenty-five (125) community groups endorsed this effort. We proceeded to meet with the largest financial institutions in our state to press for a moratorium and to discuss their foreclosure prevention efforts. Each institution asserted that it was committed to foreclosure avoidance, that it loses money in foreclosure and therefore has an incentive to keep borrowers in their homes, that it is committed to conduct outreach to borrowers to let them know about their options before they fall behind on their loans, and that loan modifications are a vital component of loss mitigation efforts. Within days of these meetings, counseling agencies and borrowers throughout the state contacted CRC and told us that loan servicers were not willing to work with borrowers in distress.

In response, CRC decided to raise money to build the capacity of home loan counseling agencies in the state so that they could better serve borrowers, and to conduct a survey of home loan counseling agencies in California to inform policy making at the federal and state level.

CRC's California Homeownership Preservation Initiative (CHOPI) has succeeded in raising over $5 million from financial institutions to fund 39 housing counseling agencies in the state. The survey of counseling agencies received a strong response from agencies overwhelmed by the demand for their services. The success of these efforts reflects the dire situation that exists in California.

Survey of Home Loan Counseling Agencies

In these times of exploding foreclosure rates and economic instability, the most important conversation taking place day to day is the one between home loan servicers and borrowers and their representatives. Shockingly, there are virtually no rules, no oversight, and no clear data concerning these critical —often life-changing—discussions.

The *Chasm between Words and Deeds* reports provide a snapshot of whether mortgage loan servicing companies are living up to their public commitments to help borrowers avoid foreclosure. These reports reflect the experiences of nonprofit home loan counseling agencies in California who are on the front lines of the foreclosure crisis, and who are working hard to help keep families in their homes. The previous report, released earlier in 2007, focused on counselors' experiences in August of 2007, at a time when relatively little data on foreclosure prevention outcomes were publicly available. That first CRC survey found that loan servicers were not modifying loans to any significant degree, were not conducting early outreach to borrowers facing rising mortgage payments, and were most likely to foreclose on borrowers.

CRC's second report, *The Growing Chasm between Words and Deeds,* focuses on loan counselors' experiences in December 2007, a time when government officials, industry associations, and individual companies were representing publicly that great strides were being made to help borrowers in distress. Sadly, after months of public discourse about the growing foreclosure crisis and the need for loan modifications, this new survey demonstrates that loan servicers' failures to meaningfully respond to the crisis continues; the servicers are neither modifying home loans on any scale nor conducting sufficient outreach to borrowers facing rising mortgage payments, and they continue to turn to foreclosure as their most common response to borrowers in distress. For the month of December, counselors again report the most common outcome for borrowers is foreclosure.

Mortgage counseling agencies are often the only place for borrowers to turn when they are faced with foreclosure. Counselors help borrowers understand their options and often act as intermediaries between borrowers and their lenders. In California, there are roughly 80 mortgage counseling offices approved by the Department of Housing and Urban Development (HUD) to provide services that include loss mitigation, mortgage delinquency and default resolution, predatory lending and post-purchase counseling. More than one-third of these counseling agencies took part in CRC's survey. The groups that responded to this second CRC survey served 8,174 consumers during December. Though several groups reported that their offices were closed for part of this holiday month, groups still saw 4,091 more clients in December than they did in June, confirming the widespread belief that things are only getting worse for homeowners.

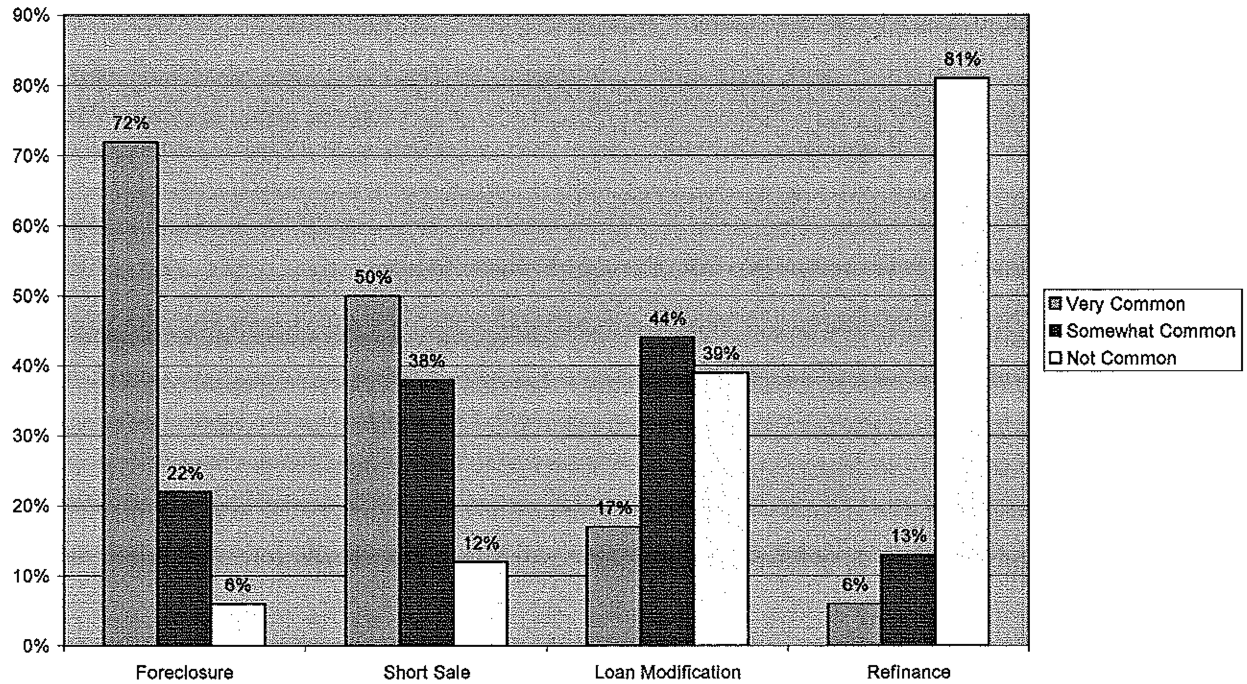
California housing counseling agencies responding to this survey confirm that more could have been done to keep these families in their homes.

Lenders not responsive. Agencies were asked if both particular servicers, and the industry as a whole, have been consistently modifying loans by fixing interest rates for the life of the loan. 17 groups responded that the industry as a whole is not consistently modifying loans for long-term affordability. No groups reported that the industry as a whole was modifying loans for the long term.

Postponing the day of reckoning. In general, for borrowers in early delinquency or facing unaffordable interest rate resets, servicers are not fixing rates for the long term. Counseling groups were most likely to respond that when servicers were willing to modify loans, they were only willing to fix interest rates for one year at a time; this was true for 8 of the 12 servicers considered in the survey, and for the industry as a whole. Rather than provide a sustainable solution for borrowers in distressed loans, these short-term modifications most likely only delay the problem, and are akin to giving the borrower another bad loan with a short period of affordability followed by increasing payments that may be difficult to afford.

Devastating borrower outcomes. Counseling agencies were asked how common different outcomes were for their clients.

Borrower Outcomes: % of Counselors Reporting Frequency of Various Loss Mitigation Outcomes: California December 2007



- **Foreclosures lead.** Groups were most likely to report foreclosure a "very common" outcome for borrowers. A shocking 26 groups, or 72% of those reporting, said that foreclosures are a very common outcome for their clients. This was an increase from the 19 groups reporting so four months ago. In December, a total of 34 groups, or 94% of those reporting, said that foreclosures were a "very common" or "somewhat common" outcome for borrowers.

- **Short sales next.** 17 groups, or 50% of those reporting, cited "short sales"—where servicers minimize their losses by allowing homeowners to sell their property for less than the amount of money owed—as a "very common" outcome for borrowers. An additional 13 agencies reported short sales as "somewhat common," meaning that for the month of December, 88% of groups responding reported that short sales were "very common" or "somewhat common." While preferable to foreclosure, short sales still leave the borrower without a home or equity, and may result in a higher tax bill.

- **Loan modifications are not happening.** In contrast, only 6 counseling agencies, or 17% of groups reporting, said that loan modifications are a "very common" outcome for borrowers. At the same time, 14 groups, or 44% of those reporting, said that loan modifications are "not common."

Outreach to borrowers in trouble is poor. Despite lenders' assertions that they are reaching out to borrowers BEFORE they face problems from rising interest rates and higher monthly payments, most counseling agencies do not see this happening. A surprising 20 respondents, or 91% of groups responding, said that in their experience, industry-wide, lenders were NOT making contact with borrowers before delinquency. Only 2 groups reported that early contact was being made with borrowers at risk of foreclosure.

Servicers are hard to work with. Counseling agencies were asked, "In your experience, which lenders/servicers are the most difficult to work with in trying to keep borrowers in their homes?" A total of 23 companies were named as servicers that are difficult to work with. Washington Mutual and HomEq were named most often, with 9 groups reporting these two servicers as being difficult to work with. GMAC was named by 8 groups. Countrywide and Wells Fargo were named by 6 groups as being difficult to work with.

Out of the Mouths of Counseling Agencies. When asked to comment on companies that are especially difficult to work with, counseling agencies had a lot to say. Respondents expressed frustration with companies that do not offer any real solutions and that provide poor customer service. Comments described long wait times on the phone, lost faxes, changing personnel, unfamiliarity with loans and prior conversations, non returned calls, lack of authority to make decisions, statements at odds with company policies, and decisions that make no sense. Most groups reported increasing caseloads and poor outcomes. Below are representative comments.

- "Overall, the lenders are still unwilling to be proactive in their approach with loss mitigation. Our lending team has several deals that are 'pending' but there are few if any resolutions."

- "1. They do not return calls; 2. Take 30-60 days to give us a written answer; 3. Require their own authorization to release information forms; 4. Take too long to assign cases; 5. Keep changing officers when cases are assigned; 6. They give wrong information regarding the loan; 7. Always have to refax and explain the situation to different people; 8. Customer Service sends us to the wrong department; 9. They hang up; and 10. Never willing to work any details—they always have new personnel."

- "We are still experiencing significant resistance from lenders. Across the board we are being told by lenders that they will not even talk to us if the borrower is current, despite the media advice to borrowers to contact lenders before they are in default. This policy seems to directly contradict the supposed agreement to freeze rates for borrowers who remain current."

Counseling Agencies Large and Small. The groups that took the time to fill out this survey represent a cross section of counseling agencies in the state. Groups came from various parts of California and range from small groups to large offices. These groups served 8,174 consumers in the month of December alone. This was an increase of 4,091 consumers from June of 2007.

The report concludes with recommendations for lenders and policy makers. A key recommendation is for Congress to pass laws that promote loan modifications and refinance loans. More specifically, CRC recommends prohibiting foreclosures unless loan servicers offer borrowers meaningful loss mitigation options, and requiring detailed HMDA-like reporting of loan servicers that will let the public know which companies are keeping their promises to help borrowers remain in their homes.

Update From Housing Counselors

An informal poll of housing counselors and legal service offices in the last week confirms that the situation on the ground has not improved for borrowers since December 2007. Groups report difficulty in accessing the right person in loss mitigation, getting the "run around," increasing strain on resources in light of high borrower demand, loans that were clearly unaffordable and should never have been made, need for more funding for housing counseling agencies, response time from servicers is longer than before, lost documents and faxes, being told to call back when borrower is in default, and being strung along by servicers who say a borrower can get a loan modification only to decline the modification before foreclosure.

A growing concern is that borrowers are being pushed in "loan mods" and "workouts" that do not benefit them. "The workouts are not logical and make no sense," according to one counselor. Said another, "we are still seeing ridiculous repayment plans that the homeowners obviously cannot afford but the servicer is calling it a modification."

According to one counselor, "I was pretty optimistic early on in the year but now it's becoming very difficult to work with servicers that are not at all interested in making any effort to work with our clients, even those that can really afford a modification at a good decent rate."[8]

More Talk, More Data, Same Results

Since the release of CRC's first home loan counseling agency survey results in October, there have been increasing media reports of foreclosures, and increasing discussions by politicians, public agencies, industry associations and consumer groups about what is being done and what should be done to solve the problem. But lenders are still not required to verify that they are keeping their promises and, as an industry, have offered no meaningful and verifiable reporting to show that they are working with borrowers to prevent foreclosure.

While many of these efforts are well intentioned, the bottom line is that, on the ground, servicers are simply not helping California borrowers to avoid foreclosure to any significant degree. A few of the plans and data releases of the past few months will be examined, briefly.

<u>Inadequate Plans</u>

[8] Quotes from housing counselors contacted by CRC in April 2008.

- **Governor Schwarzenegger's Subprime Loan Agreement**

  On November 21, 2007, Governor Schwarzenegger announced an agreement with several loan servicers to streamline the loan modification process for subprime borrowers who are living in their home, making timely payments and likely to default when their loan jumps to a scheduled higher rate.[9] Initially, the agreement was signed by 4 large loan servicers. Now, 10 companies have signed on,[10] and the Administration is continuing to encourage others companies to sign on as well. While important information is being collected from loan servicers by the state Department of Corporations (see, below), no progress reports have been provided on the success of the Agreement or the performance of participating lenders to date.

  The Subprime Loan Agreement and state data collection efforts are positive, but need to be expanded if they are to yield meaningful results for California's homeowners. Some of the companies that signed the Subprime Loan Agreement fared poorly in CRC's latest survey, and were cited by counseling agencies as unwilling to offer loan modifications, not conducting adequate outreach, and being difficult to work with. The Administration must be more proactive and aggressive in ensuring that servicers are keeping their promises. This should be accomplished through a more rigorous reporting scheme that is public and that breaks out data by servicing company; a simple complaint process whereby consumers and home counseling agencies can get redress if they are experiencing difficulties with a signatory to the Agreement; and expanding the terms of the Agreement itself to require servicers to work with borrowers who are in default as a result of their interest rate resetting.

- **President Bush's "Teaser Freezer" Plan**

  In December 2007, President Bush and Treasury Secretary Paulson announced a plan that urged loan servicers to agree to freeze the interest rates on certain loans for certain borrowers for a five-year period. This reflected a change from prior Administration assertions that the market would be able to deal with the foreclosure crisis. Nevertheless, the plan fails in relying on voluntary compliance by the lending industry, and in covering too few borrowers. The Center for Responsible Lending estimates that only 3% of borrowers with outstanding subprime mortgages with adjustable rates will benefit from this plan.[11]

  And it may be that the streamlined loan modifications promoted by the Plan, where they occur, work to the interest of investors over borrowers. A recent analysis by Fitch Ratings found that the Hope Now's voluntary streamlined modification yields the smallest amount of lost interest, relative to other strategies, for investors. However, Fitch said reducing the teaser rate costs the trust

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[9] See, www.corp.ca.gov/press/news/SubprimeLending/asp

[10] To date, the companies that have signed the Agreement include: Carrington Mortgage Services; Countrywide Home Loans; GMAC Mortgage; LLC; Home Loan Services, Inc.; Homeq Servicing; HSBC Mortgage Services; Litton Loan Servicing; OCWEN Loan Servicing, LLC; Option One Mortgage; and Wilshire Credit. Ibid.

[11] Center for Responsible Lending, "U.S. Treasury Plan Helps Only 3% of At-Risk Homes," January 28, 2008.

only slightly more cash flow while making the payment more affordable for the borrower.[12]

- **Project Lifeline**

  In February, six large loan servicers announced the Project Lifeline program. Participating lenders agree to pause foreclosures for certain seriously delinquent borrowers for up to 30 days. Initial participants include Washington Mutual, Bank of America, Wells Fargo, JP Morgan Chase, Citigroup and Countrywide, though other lenders have since joined. But this plan, like the President's earlier plan, is doomed to fail because it relies on voluntary compliance and will help too few borrowers. Even "Wall Street analysts . . . said the plan fell short of the broad reforms necessary to help people meet mortgage payments as home values drop and foreclosures rise."[13]

<u>Inadequate or Discouraging Data</u>

The only way to determine if servicers are working with borrowers as they claim to be is to collect data in a unified, comprehensive and public fashion. In the last few months, several data collection efforts have emerged, though the results of these efforts are unclear.

- **The Mortgage Bankers Association** released a report on January 17, 2007, that was meant to demonstrate that servicers were improving outcomes for home loan borrowers.[14] Yet the data showed that 40% of borrowers in subprime adjustable rate loans that went into foreclosure in the third quarter of 2007 had experienced a repayment plan or loan modification, which suggests that workouts offered by the industry were unrealistic and ineffective. The MBA also suggests that in the third quarter of 2007, servicers were seven times as likely to offer subprime ARM borrowers a repayment plan as opposed to a loan modification.[15] Repayment plans fail to provide a long-term solution for borrowers and, in fact, increase the payment burden on already overburdened homeowners.

  The MBA also appears to go out of its way to blame borrowers for the foreclosure crisis, saying, "Even in the current environment, loan modification of ARMs in the form of freezing interest rates can be seen as rewarding borrowers who decided to take a risk and take out loans with lower initial payments than what they would have been required to make with fixed rate, fully amortizing loans."[16] This analysis ignores the fact that brokers and lenders were pushing borrowers into unaffordable products, and that Wall Street firms and investors were paying a premium to lenders for selling these very risky loans.

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[12] "Hope Now Under Fire; Seen as Benefitting Investors," Inside B&C Lending (April 2008).
[13] Michael M. Grynbaum, "Plan to Aid Borrowers is Greeted by Criticism," New York Times, February 13, 2008.
[14] Jay Brinkmann, "An Examination of Mortgage Foreclosures, Modifications, Repayment Plans, and Other Loss Mitigaiton Activities in the Third Quarter of 2007," Mortgage Bankers Association, January 2008.
[15] *Id.* , p. 11.
[16] *Id.*, p. 5.

- **The Hope Now Alliance**, a Washington, D.C.-based coalition of mortgage servicing companies, industry trade groups and housing counseling agencies, has been collecting its own data and releasing it in the aggregate. The group reported that in the second half of 2007 it had "helped" 545,000 subprime borrowers, but the majority of this assistance (on 395,000 loans)[17] came in the form of short-term repayment plans which may just postpone the crisis. Even industry observers are critical of the group's data release.[18]

  Recently released data from Hope Now tell a similar story. An estimated 39,000 subprime loan modifications were completed in February, according to Hope Now, down from 43,000 in January. At the same time, foreclosures were started on 98,000 subprime financed homes, an increase from January.[19]

- **The Conference of State Bank Supervisors**, comprised of bank regulators and attorneys general from various states, including California, recently issued a report based on data from thirteen participating servicers for the month of October.[20] The report's findings include:
  - 75% of seriously delinquent borrowers are not on track for any loss mitigation option;
  - A rising number of loan delinquencies are swamping the increase in loss mitigation efforts;
  - Servicers report an increase in the number of loan modifications "in progress," but the rate of loan modifications that were "closed" was low. Only 10% of the 205,270 loans received a loan modification; and,
  - The large number of loans going into default before interest rates reset suggests poor underwriting or mortgage fraud.

  The report cited the following as possible reasons for the disappointing numbers: lack of servicer capacity, lack of success in contacting borrowers, or investor resistance to loss mitigation. The report also noted that of the loss mitigation efforts that closed in October 2007, 73% were due to borrowers bringing their accounts current, and not the efforts of the servicers.[21] In what has become a distressing theme, the Office of the Comptroller of the Currency, the federal regulator of national banks, reportedly advised or directed J.P. Morgan Chase and Wells Fargo not to provide data to the working group.[22]

- **Countrywide** was one of the few companies to provide data to the public on its servicing performance. For the month of December, Countrywide asserted that it completed 13,273 loan

[17] Bloomberg News, "Mortgage Servicers Helped 545,000 Subprime Homeowners in the Second Half of 2007," The Mercury News, February 7, 2008.
[18] Cheyenne Hopkins, "Hope Now Under Fire – Even From Within; Infighting, Flawed Statistics, and Other Problems are Cited." American Banker, February 20, 2008.
[19] "Hope Now Under Fire; Seen as Benefitting Investors," Inside B&C Lending (April 2008).
[20] State Foreclosure Prevention Working Group, "Analysis of Subprime Mortgage Servicing Performance," Data Report No. 1, February 2008.
[21] "State Group Finds Subprime Servicers' Efforts Lacking," Inside B&C Lending, February 15, 2008.
[22] Ruth Simon, "States Say Mortgage Companies Fall Short on Loan Modifications," Wall Street Journal, February 7, 2008.

workout plans, up 243% from a year earlier. Countrywide also entered into an agreement with community group ACORN to improve its servicing practices. While Countrywide reports a large increase in loan modifications towards the end of 2007, Countrywide still completed more foreclosures (77,820) than loan modifications (55,801) for the year.[23] While Countrywide promotes its programs and releases more data than other companies, it remains difficult to put its data in context and to know to what degree Countrywide borrowers are receiving meaningful and long term assistance. Significantly, in February, Bank of America applied to the Federal Reserve for approval to acquire Countrywide, which threatens to take Countrywide out from under state regulatory oversight.

- **Moody's Investor Services** attracted national attention in 2007 when it surveyed loan servicers and found that only 1% of loans scheduled for an interest rate reset were modified. Moody's updated the survey and found that loan modifications had improved, but only to a still unacceptably low 3.5%.[24]

- **The Federal Reserve Board** conducted a survey of senior loan officers in January of 2008. The survey found that the vast majority of banks are taking a case by case approach to loan modifications, and many don't expect the streamlined, loan modification plan endorsed by the Hope Now alliance to have much of an impact on their loan mitigation efforts. Only 13% of banks surveyed said streamlined loan modifications would play a "very significant" role in their loss mitigation efforts, while 64% said that loan modifications would not play a significant role.[25]

- **The California Department of Corporations** has been collecting loan servicing data from state-licensed servicers, and making aspects of that data available to the public in aggregate form. Data collected has been fairly detailed, and the Commissioner of the Department reported an increase in loan modifications in helpful comments accompanying the data report.

  Yet the data reported by the Department showed that there were only 5,630 loan modifications in January, while there were over 10,000 foreclosures in the same month.[26] In fact, several of the servicing companies that have signed on to the Governor's Subprime Loan Agreement were cited by counseling agencies in the state as not modifying loans, not conducting adequate outreach, and being difficult to work with.

CRC Support for HR 5679

[23] Data from "Testimony of Mary Jane M. Seebach of Countrywide Financial Corporation Before the Banking Finance, and Insurance Committee of the California State Senate," January 16, 2008.
[24] Al Yoon, "Subprime Loan 'Mods' Still Fall Short – Moody's," Reuters, December 18, 2007.
[25] "Banks Take 'Case by Case' Approach,'" *Mortgage Servicing News*, March 2008.
[26] Memo from Department of Corporations Commissioner Preston DuFauchard, March 3, 2008, available at www.corp.ca.gov

The experiment with voluntary industry initiatives has failed. Congress needs to act to obligate loan servicers to act in good faith to keep borrowers in their homes. There are several provisions in HR 5679 which would help home loan borrowers, including requirements that fees be reasonable, notification be given to borrowers of impending interest rate resets, second and first lien holders work to facilitate loan modifications, borrowers have access to loss mitigation personnel with authority, referrals be made to counselors, borrowers receive protection against coerced waiver of rights, and loan servicers report on loss mitigation outcomes. CRC supports these important provisions.

We urge that loss mitigation data be collected and made publicly available by company. Much as Home Mortgage Disclosure Act (HMDA) data has improved company practices by shedding light on them, so too can loss mitigation data reporting lead to better outcomes for homeowners and their communities.

At the same time, we know that loan modification and effective loss mitigation will not be enough to stave off foreclosure for thousands of homeowners. Broader solutions are needed, such as authorizing a federal agency to purchase and rework distressed loans on a broad scale.

Conclusion

Voluntary measures are not working. Hundreds of thousands of borrowers are falling through the cracks into foreclosure and communities are suffering as a result. Most observers recognize that things will get worse before they get better given the large number of rate resets that are imminent, coupled with falling home prices and a slowing economy. We need bolder measures, including mandatory loss mitigation as outlined in HR5679.

Madame Chairwoman and members of the Subcommittee, thank you again for the opportunity to testify today. The California Reinvestment Coalition looks forward to working with you to help borrowers remain in their homes, and to help communities avoid the devastating impacts of foreclosure.